

APPEAL NO. 033004  
FILED DECEMBER 29, 2003

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 5, 2003. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the eighth quarter. Claimant appealed the good faith and SIBs entitlement determinations on sufficiency grounds. The file did not contain a response from respondent (carrier). The Appeals Panel reversed the hearing officer's decision and remanded the case for reconstruction of the record, relisting of the exhibits, and reconsideration of the good faith issue. The hearing officer held a hearing on remand on October 10, 2003. In a decision on remand, the hearing officer essentially made the same determinations. Claimant again appealed and carrier responded that the Appeals Panel should affirm the hearing officer's decision.

DECISION

We affirm.

Claimant contends that she submitted an adequate narrative in this case. The hearing officer found that claimant's narratives were not adequate. We have considered the SIBs rules and compared the narrative from Dr. G to other narratives found adequate in other cases, such as Texas Workers' Compensation Commission Appeal No. 020342, decided April 16, 2002. We disagree with the hearing officer and conclude that claimant did provide a narrative report from a doctor that specifically explains how the injury causes a total inability to work. We reverse the hearing officer's determination that claimant did not provide such a narrative and render a decision that claimant did provide a narrative report from a doctor which specifically explains how the injury causes a total inability to work. Normally, this would mean that we would render a decision in claimant's favor on SIBs entitlement, since the hearing officer also found that claimant had no ability to work. However, in her decision the hearing officer said, "Claimant's evidence, both *documentary* and testimonial, was *not persuasive* in proving all elements necessary" for SIBs entitlement. (Emphasis added.) We conclude from this that the hearing officer has determined that the narrative from Dr. G is not credible, since it did not persuade the hearing officer. Therefore, we cannot render a decision in claimant's favor based on a narrative that the hearing officer apparently did not believe.

In her prior decision, the hearing officer did find that claimant was "unable to perform any type of work in any capacity." The hearing officer made essentially the same finding on remand. As noted in our remand decision, we are unsure what evidence the hearing officer relied on to find that claimant had no ability to work since the hearing officer didn't believe claimant and she didn't believe claimant's evidence. This was not explained on remand and we still perceive an internal conflict in the hearing officer's decision. A review of the record does not reveal evidence that claimant

is unable to work due to a cause unrelated to the compensable injury. The hearing officer thought claimant could not work but we are unsure why the hearing officer believed this. We have no more remands. After considering the decision as written, we have no choice but to assume the hearing officer found as she said: that the documentary evidence is not persuasive. We will not substitute our judgment for the hearing officer's in this regard. Given the procedural status of the case at this point, we affirm the hearing officer's decision and order regarding SIBs entitlement.

Claimant contends that the hearing officer was biased. The record does not support claimant's assertion. We perceive no error.

Claimant also contends that the hearing officer abused her discretion in excluding an exhibit. We addressed this contention in our prior decision and decline to revisit it here.

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
800 BRAZOS, SUITE 750  
AUSTIN, TEXAS 78701.**

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Judy L. S. Barnes  
Appeals Judge

CONCUR IN THE RESULT:

I concur in the result only and would also affirm that claimant is not entitled to SIBs, but on other grounds. I would affirm the hearing officer's determination that Dr. G's report does not specifically explain how the claimant's compensable injury caused a total inability to work.

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Chris Cowan  
Appeals Judge

DISSENTING OPINION:

I respectfully dissent. I would reverse the hearing officer's finding that the claimant failed to provide a sufficient narrative and would therefore render a new determination that claimant is entitled to SIBs for the eighth quarter.

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Margaret L. Turner  
Appeals Judge